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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LAURA GALVAN and GERALD
LAVELL TURNER,

Defendants and Appellants.

G039597

(Super. Ct. No. 07CF1408)

O P I N I O N

Appeals from judgments of the Superior Court of Orange County, Richard M. King, Judge. Affirmed as modified.

Christian C. Buckley, under appointment by the Court of Appeal, for Defendant and Appellant Laura Galvan.

Victoria H. Stafford, under appointment by the Court of Appeal, for Defendant and Appellant Gerald Lavell Turner.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Gil Gonzalez and Barry Carlton, Deputy Attorneys General, for Plaintiff and Respondent.

Defendants Laura Galvan and Gerald Lavell Turner challenge the standard jury instruction on reasonable doubt. We hold instructing jurors to “compare” all of the evidence places no evidentiary burden on defendants. Defendants also contend the court should have made them jointly and severally liable for direct victim restitution. We modify the judgments to make explicit their joint and several liability, and affirm.

FACTS

Galvan took the victim to her motel room to have sex for money. Her boyfriend, Turner, entered the room and beat the victim unconscious. Galvan took the victim’s truck keys from him during the beating. The victim recovered, stumbled outside, and saw someone driving his truck away. His truck had his computer and camera in it. The police later pulled over Galvan while she was driving the truck. The equipment was gone.

The jury found Galvan guilty of carjacking (Pen Code, § 215, subd. (a)),¹ robbery (§ 211), aggravated assault (§ 245, subd. (a)), and vehicle theft (Veh. Code, § 10851, subd. (a)). It found Turner guilty of robbery and aggravated assault, but acquitted him of vehicle theft. The court sentenced each defendant to five years in state prison. It ordered each to pay direct restitution to the victim of \$2,048.88.

DISCUSSION

Defendants take issue with Judicial Council of California Criminal Jury Instructions (2006-2007) CALCRIM No. 220, the standard form jury instruction on reasonable doubt. They single out this sentence: “In deciding whether the People have

¹ All further statutory references are to the Penal Code unless otherwise stated.

proved their case beyond a reasonable doubt, you must impartially compare and consider all the evidence that was received throughout the trial.” (CALCRIM No. 220.) They contend the instruction encourages the jury to compare the prosecution’s evidence with the defense’s evidence, implicitly and impermissibly placing a burden of proof or production upon the defense.

Defendants distort the instruction. The instruction merely directs the jury to compare and consider all the admitted evidence, regardless of who produces it. It does not reasonably suggest the defense must produce evidence for comparison. The instruction’s other terms confirm the defense has no such burden: “A defendant in a criminal case is presumed to be innocent. This presumption requires that the People prove a defendant guilty beyond a reasonable doubt.” (CALCRIM No. 220.) The instruction further provides, as modified for multiple defendants, “Unless the evidence proves the defendant[s] guilty beyond a reasonable doubt, [they are] entitled to an acquittal and you must find [them] not guilty.” (*Ibid.*) No reasonable juror could understand CALCRIM No. 220 as imposing any burden of proof or production on the defendants.

Courts have repeatedly rejected defendants’ claimed instructional error. (See *People v. Garelick* (2008) 161 Cal.App.4th 1107, 1117-1119; *People v. Hernández Ríos* (2007) 151 Cal.App.4th 1154, 1156-1157.) We reject it as well.

Defendants also challenge the restitution order. The court ordered each defendant to pay direct victim restitution in the total amount of the value of the unrecovered equipment. Defendants contend the court should have imposed joint and several liability instead. “It seems glaringly obvious that is what it did here. In this light, there is no double recovery; nor is [one defendant] entitled to have [the other defendant’s] restitution obligation credited against his [or hers]. Of course, each defendant is entitled to a credit for any actual payments by the other. To make sure this is clear (though out of an excess of caution), we will modify the judgment so as to provide expressly that the

direct victim restitution ordered is joint and several.” (*People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1535.)

DISPOSITION

The judgments are modified to provide expressly that defendants are jointly and severally liable to pay \$2,048.88 in direct victim restitution. As modified, the judgments are affirmed. The trial court is directed to amend the abstracts of judgment accordingly and forward certified copies to the Department of Corrections and Rehabilitation.

IKOLA, J.

WE CONCUR:

MOORE, ACTING P. J.

ARONSON, J.